

In the Matter of Merchant Mariner's Document No. Z-868046 and all
other Licenses and Documents
Issued to: DIMITRIS JOANIS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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DIMITRIS JOANIS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 5 January 1955, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-868046 issued to Dimitris Joanis upon finding him guilty of misconduct based upon four specifications alleging in substance that while serving as Deck Engineer on board the American SS JOSEPH FEUR under authority of the document above described, on or about 4 June 1950, while said vessel was in the port of Amsterdam, Netherlands, he wrongfully used vile and abusive language to the Master; he wrongfully disobeyed a lawful order of the Master; he wrongfully struck the Master; and on 5 June 1950, he wrongfully failed to perform his duties.

At the commencement of the hearing on 9 August 1954, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own choice and he entered a plea of "not guilty" to the charge and each of the above specifications. Four other specifications were found not proved by the Examiner.

Thereupon, the Investigating Officer made his opening statement. In connection with the specifications found proved, the Investigating Officer introduced in evidence a Counselor Report by the American Counsel General at Amsterdam, a certified copy of an entry in the ship's Official Logbook and the testimony of the Master of the JOSEPH FEUER.

Appellant did not personally appear at the hearing after the adjournment on 17 September 1954. Appellant did not notify his counsel or the Examiner as to Appellant's whereabouts or when he would return. On 20 December 1954, counsel read a letter from Appellant in which he stated that he was in Salonika, and could not return to the United States until 15 May 1955. In view of prior

warning to Appellant not to remain absent for extend periods, the Examiner declined to grant counsel's request for an adjournment until May 1955.

At the conclusion of the hearing, having heard the argument of the Investigating Officer and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and four specifications had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-868046, and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of 24 months - 12 months' outright suspension and 12 months' suspension on probation until 24 months after the termination of the outright suspension.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 4 and 5 June 1950, Appellant was serving as Deck Engineer on board the American SS JOSEPH FEUER and acting under authority of his Merchant Mariner's Document No. Z-868046 while the ship was in the port of Amsterdam, Netherlands.

At 2350 on 4 June 1950, the Master heard shouting and other noise when he returned on board. Appellant was banging on the locked door of the Second Cook's quarters and threatening to kill him. Earlier in the evening, Appellant and the Second Cook had an argument while ashore in a bar. The Master asked Appellant what the trouble was. He said the Second Cook had drawn a knife on Appellant. The Master told Appellant to go to his quarters but he kept beating on the door and threatening the Second Cook who was not even on board at the time. The Master continued for about 10 minutes to order Appellant to go to his quarters. Appellant then commenced directing vile, abusive language towards the Master and pushed him. The Master told Appellant that he would be put in irons if he continued pushing the Master. Appellant shoved the Master several more times and he went to his cabin to get handcuffs.

The Master returned to the scene with two of his deck officers. Appellant became more violent than previously. Before the Master was able to put the handcuffs on Appellant, he had struck the Master on the face, shoved him some more and choked the Master. The latter received a black eye and numerous bruises. Finally, the Master struck Appellant on the head with handcuffs until he loosened his grip on the Master. By the time the struggle was over, the First, Second and Third Mates were assisting the

Master. The local police took Appellant off the ship, obtained treatment for his head wounds and kept him in jail for the balance of the night.

Appellant did not report on board to perform his regular duties on 5 June 1950. On this date, the Master, Appellant and other members of the crew went to the American Consulate in connection with the trouble the night before. The entry, which the Master made in the Official Logbook about the incident, was stamped with the seal of the American Consulate General at this time. Appellant was permitted to complete the voyage. The Master reported the matter to Coast Guard Headquarters by mail from Amsterdam.

Appellant's prior record consists of probationary suspension in 1946 for failure to turn to and an admonition in 1949 for creating a disturbance.

BASIS OF APPEAL

This appeal had been taken from the order imposed by the Examiner. It is contended that:

1. Appellant's guilt was not proved by substantial, reliable and probative evidence. Appellant did not touch the Master or disobey him. Since Appellant's door was broken and his radio was missing, he was knocking on the Second Cook's door when the Master approached. When Appellant asked the Master to look in the Second Cook's room for the radio, the Master shoved Appellant and hit him on the head with a pair of handcuffs.
2. Appellant did not know about the log entry until four years later. The entry was made by the Master in anticipation of charges for assaulting Appellant. Since Appellant did not press charges against the Master, the log entry was not brought up until Appellant's alleged misconduct in 1954. The 1954 specifications were not proved.
3. Appellant was not given an opportunity to present his defense prior to the occurrence of serious family illness and eventual death which required his presence in Salonika, Greece, until May 1955.

In conclusion, Appellant respectfully requests that the order be reversed or, alternatively, that it be made retroactive to the date of the commencement of the hearing - 9 August 1954.

APPEARANCES: Alter J. Klein, Esquire, of New York, New York, of Counsel.

OPINION

There is no doubt that the testimony of the Master, supported by the log entry and the statements made by the three deck officers of the ship before the American Vice Consul at Amsterdam, constitutes substantial, reliable and probative evidence of the above findings of fact. Conversely, Appellant's denials of guilt are considerably weakened by his two different versions as to how the difficulty started. In this statement before the American Vice Consul, Appellant said he was arguing with the Second Cook because he said Appellant was eating too much bread and would be put on ration. On appeal, Appellant states that he was looking for his radio when the Master hit Appellant with the handcuffs. In both versions, Appellant makes the highly unlikely claim that the Master attacked the Appellant without provocation. Another discrediting factor is that the evidence shows the Second Cook was not on board at the time of this incident.

Although Appellant should have been informed of the log entry at the time of the offense in accordance with the statutory requirement, the seal of the American Consulate General on the entry is ample evidence that it was made at the proper time. The report of the Master to the Coast Guard shows that he did not make the entry solely in anticipation of being charged with assaulting Appellant. Nevertheless, the log entry, in itself, would not have been adequate to make out a prima facie case since there was not substantial conformance with the statutory requirements. See 46 U.S.C. 702.

Appellant had ample opportunity to request that he be permitted to testify before leaving for Greece. Instead, he departed without informing his counsel or the Examiner. Counsel did not request the appearance of other witnesses or show any prejudice resulting from this delay since the time of the offenses. In view of the grave nature of the offenses, this delay is not considered to be a basis for modification of the decision.

The extreme seriousness of the offenses is emphasized by the facts that Appellant not only disobeyed the Master and directed obscene language towards him; but Appellant used physical violence against the Master who was in command of the ship. Such conduct cannot be tolerated. Masters must maintain discipline on their ships and, in order to do so, they must be respected.

ORDER

The order of the Examiner dated at New York, New York, on 5 January 1955 is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 6th day of April, 1956.